

**TITLE 78 RECODIFICATION - TITLE 78B****CHAPTER 4**

2008 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

Title 78B, Chapter 4, Limitations on Liability.

**Highlighted Provisions:**

This bill:

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**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****RENUMBERS AND AMENDS:**

**78B-4-101**, (Renumbered from 78-19-1, as last amended by Laws of Utah 2004,  
Chapter 267)

**78B-4-102**, (Renumbered from 78-19-2, as enacted by Laws of Utah 1990, Chapter 4)

**78B-4-103**, (Renumbered from 78-19-3, as enacted by Laws of Utah 1990, Chapter 4)

**78B-4-201**, (Renumbered from 78-27b-101, as last amended by Laws of Utah 2003,  
Chapter 175)

**78B-4-202**, (Renumbered from 78-27b-102, as last amended by Laws of Utah 2003,  
Chapter 175)

**78B-4-203**, (Renumbered from 78-27b-103, as enacted by Laws of Utah 2003, Chapter  
175)

**78B-4-301**, (Renumbered from 78-27d-101, as enacted by Laws of Utah 2004, Chapter  
194)

**78B-4-302**, (Renumbered from 78-27d-102, as enacted by Laws of Utah 2004, Chapter  
194)

- 32           **78B-4-303**, (Renumbered from 78-27d-103, as enacted by Laws of Utah 2004, Chapter  
33           194)
- 34           **78B-4-304**, (Renumbered from 78-27d-104, as enacted by Laws of Utah 2004, Chapter  
35           194)
- 36           **78B-4-305**, (Renumbered from 78-27d-105, as enacted by Laws of Utah 2004, Chapter  
37           194)
- 38           **78B-4-306**, (Renumbered from 78-27d-106, as enacted by Laws of Utah 2004, Chapter  
39           194)
- 40           **78B-4-401**, (Renumbered from 78-27-51, as enacted by Laws of Utah 1979, Chapter  
41           166)
- 42           **78B-4-402**, (Renumbered from 78-27-52, as last amended by Laws of Utah 2006,  
43           Chapter 126)
- 44           **78B-4-403**, (Renumbered from 78-27-53, as last amended by Laws of Utah 1986,  
45           Chapter 199)
- 46           **78B-4-404**, (Renumbered from 78-27-54, as enacted by Laws of Utah 1979, Chapter  
47           166)
- 48           **78B-4-501**, (Renumbered from 78-11-22, as last amended by Laws of Utah 2004,  
49           Chapter 90)
- 50           **78B-4-502**, (Renumbered from 78-11-22.1, as enacted by Laws of Utah 1989, Chapter  
51           106)
- 52           **78B-4-503**, (Renumbered from 78-27-59, as enacted by Laws of Utah 1986, Chapter  
53           179)
- 54           **78B-4-504**, (Renumbered from 78-11-22.2, as last amended by Laws of Utah 2004,  
55           Chapter 280)
- 56           **78B-4-505**, (Renumbered from 78-11-28, as enacted by Laws of Utah 2005, Chapter  
57           308)
- 58           **78B-4-506**, (Renumbered from 78-27-60, as last amended by Laws of Utah 1997,  
59           Chapter 10)
- 60           **78B-4-507**, (Renumbered from 78-27-61, as enacted by Laws of Utah 1998, Chapter  
61           148)
- 62           **78B-4-508**, (Renumbered from 78-27-62, as enacted by Laws of Utah 1998, Chapter

200)

**78B-4-509**, (Renumbered from 78-27-63, as last amended by Laws of Utah 2007,  
Chapters 280, 329, and 357)

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78B-4-101**, which is renumbered from Section 78-19-1 is  
renumbered and amended to read:

#### **CHAPTER 4. LIMITATIONS ON LIABILITY**

##### **Part 1. Liability Protection for Volunteers**

###### **~~[78-19-1].~~ 78B-4-101. Definitions.**

As used in this ~~chapter~~ part:

(1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic  
damage.

(2) "Financially secure source of recovery" means that, at the time of the incident, a  
nonprofit organization:

(a) has an insurance policy in effect that covers the activities of the volunteer and has  
an insurance limit of not less than the limits established under the Governmental Immunity Act  
of Utah in Section 63-30d-604; or

(b) has established a qualified trust with a value not less than the combined limits for  
property damage and single occurrence liability established under the Governmental Immunity  
Act of Utah in Section 63-30d-604.

(3) "Nonprofit organization" means any organization, other than a public entity,  
described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under  
Section 501 (a) of that code.

(4) "Public entity" has the same meaning as defined in Section 63-30b-1.

(5) "Qualified trust" means a trust held for the purpose of compensating claims for  
damages or injury in a trust company licensed to do business in this state under the provisions  
of Title 7, Chapter 5, Trust Business.

(6) "Reimbursements" means, with respect to each nonprofit organization:

(a) compensation or honoraria totaling less than \$300 per calendar year; and

(b) payment of expenses actually incurred.

(7) (a) "Volunteer" means an individual performing services for a nonprofit organization who does not receive anything of value from that nonprofit organization for those services except reimbursements.

(b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(c) "Volunteer" does not include an individual performing services for a public entity to the extent the services are within the scope of Title 63, Chapter 30b, Immunity for Persons Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

Section 2. Section **78B-4-102**, which is renumbered from Section 78-19-2 is renumbered and amended to read:

**[78-19-2]. 78B-4-102. Liability protection for volunteers -- Exceptions.**

(1) Except as provided in Subsection (2), no volunteer providing services for a nonprofit organization incurs any legal liability for any act or omission of the volunteer while providing services for the nonprofit organization and no volunteer incurs any personal financial liability for any tort claim or other action seeking damage for an injury arising from any act or omission of the volunteer while providing services for the nonprofit organization if:

(a) the individual was acting in good faith and reasonably believed he was acting within the scope of his official functions and duties with the nonprofit organization; and

(b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct.

(2) The protection against volunteer liability provided by this section does not apply:

(a) to injuries resulting from a volunteer's operation of a motor vehicle, a vessel, aircraft or other vehicle for which a pilot or operator's license is required;

(b) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law; or

(c) where the nonprofit organization for which the volunteer is working fails to provide a financially secure source of recovery for individuals who suffer injuries as a result of actions taken by the volunteer on behalf of the nonprofit organization.

(3) Nothing in this section shall bar an action by a volunteer against an organization, its officers, or other persons who intentionally or knowingly misrepresent that a financially secure source of recovery does or will exist during a period when such a source does not or will not in

125 fact exist.

126 (4) Nothing in this section shall be construed to place a duty upon a nonprofit  
127 organization to provide a financially secure source of recovery.

128 (5) The granting of immunity from liability to a volunteer under this section [~~shall have~~  
129 ~~no~~] does not effect on the liability of the nonprofit organization providing the financially secure  
130 source of recovery.

131 Section 3. Section **78B-4-103**, which is renumbered from Section 78-19-3 is  
132 renumbered and amended to read:

133 ~~[78-19-3].~~ **78B-4-103. Liability protection for organizations.**

134 A nonprofit organization is not liable for the acts or omissions of its volunteers in any  
135 circumstance where:

136 (1) the acts of its volunteers are not as described in Subsection ~~[78-19-2]~~ 78B-4-102(1)  
137 unless the nonprofit organization had, or reasonably should have had, reasonable notice of the  
138 volunteer's unfitness to provide services to the nonprofit organization under circumstances that  
139 make the nonprofit organization's use of the volunteer reckless or wanton in light of that notice;  
140 or

141 (2) a business employer would not be liable under the laws of this state if the act or  
142 omission were the act or omission of one of its employees.

143 Section 4. Section **78B-4-201**, which is renumbered from Section 78-27b-101 is  
144 renumbered and amended to read:

145 **Part 2. Limitations on Liability for Equine and Livestock Activities**

146 ~~[78-27b-101].~~ **78B-4-201. Definitions.**

147 As used in this [~~chapter~~] part:

148 (1) "Equine" means any member of the equidae family.

149 (2) "Equine activity" means:

150 (a) equine shows, fairs, competitions, performances, racing, sales, or parades that  
151 involve any breeds of equines and any equine disciplines, including dressage, hunter and  
152 jumper horse shows, grand prix jumping, multiple-day events, combined training, rodeos,  
153 driving, pulling, cutting, polo, steeple chasing, hunting, endurance trail riding, and western  
154 games;

155 (b) boarding or training equines;

- 156 (c) teaching persons equestrian skills;
- 157 (d) riding, inspecting, or evaluating an equine owned by another person regardless of  
158 whether the owner receives monetary or other valuable consideration;
- 159 (e) riding, inspecting, or evaluating an equine by a prospective purchaser; or
- 160 (f) other equine activities of any type including rides, trips, hunts, or informal or  
161 spontaneous activities sponsored by an equine activity sponsor.
- 162 (3) "Equine activity sponsor" means an individual, group, governmental entity, club,  
163 partnership, or corporation, whether operating for profit or as a nonprofit entity, which  
164 sponsors, organizes, or provides facilities for an equine activity, including:
- 165 (a) pony clubs, hunt clubs, riding clubs, 4-H programs, therapeutic riding programs,  
166 and public and private schools and postsecondary educational institutions that sponsor equine  
167 activities; and
- 168 (b) operators, instructors, and promoters of equine facilities, stables, clubhouses,  
169 ponyride strings, fairs, and arenas.
- 170 (4) "Equine professional" means a person compensated for an equine activity by:
- 171 (a) instructing a participant;
- 172 (b) renting to a participant an equine to ride, drive, or be a passenger upon the equine;
- 173 or
- 174 (c) renting equine equipment or tack to a participant.
- 175 (5) "Inherent risk" with regard to equine or livestock activities means those dangers or  
176 conditions which are an integral part of equine or livestock activities, which may include:
- 177 (a) the propensity of the animal to behave in ways that may result in injury, harm, or  
178 death to persons on or around them;
- 179 (b) the unpredictability of the animal's reaction to outside stimulation such as sounds,  
180 sudden movement, and unfamiliar objects, persons, or other animals;
- 181 (c) collisions with other animals or objects; or
- 182 (d) the potential of a participant to act in a negligent manner that may contribute to  
183 injury to the participant or others, such as failing to maintain control over the animal or not  
184 acting within his or her ability.
- 185 (6) "Livestock" means all domesticated animals used in the production of food, fiber,  
186 or livestock activities.

- 187 (7) "Livestock activity" means:
- 188 (a) livestock shows, fairs, competitions, performances, packing events, or parades or
- 189 rodeos that involve any or all breeds of livestock;
- 190 (b) using livestock to pull carts or to carry packs or other items;
- 191 (c) using livestock to pull travois-type carriers during rescue or emergency situations;
- 192 (d) livestock training or teaching activities or both;
- 193 (e) taking livestock on public relations trips or visits to schools or nursing homes;
- 194 (f) boarding livestock;
- 195 (g) riding, inspecting, or evaluating any livestock belonging to another, whether or not
- 196 the owner has received some monetary consideration or other thing of value for the use of the
- 197 livestock or is permitting a prospective purchaser of the livestock to ride, inspect, or evaluate
- 198 the livestock;
- 199 (h) using livestock in wool production;
- 200 (i) rides, trips, or other livestock activities of any type however informal or impromptu
- 201 that are sponsored by a livestock activity sponsor; and
- 202 (j) trimming the feet of any livestock.
- 203 (8) "Livestock activity sponsor" means an individual, group, governmental entity, club,
- 204 partnership, or corporation, whether operating for profit or as a nonprofit entity, which
- 205 sponsors, organizes, or provides facilities for a livestock activity, including:
- 206 (a) livestock clubs, 4-H programs, therapeutic riding programs, and public and private
- 207 schools and postsecondary educational institutions that sponsor livestock activities; and
- 208 (b) operators, instructors, and promoters of livestock facilities, stables, clubhouses,
- 209 fairs, and arenas.
- 210 (9) "Livestock professional" means a person compensated for a livestock activity by:
- 211 (a) instructing a participant;
- 212 (b) renting to a participant any livestock for the purpose of riding, driving, or being a
- 213 passenger upon the livestock; or
- 214 (c) renting livestock equipment or tack to a participant.
- 215 (10) "Participant" means any person, whether amateur or professional, who directly
- 216 engages in an equine activity or livestock activity, regardless of whether a fee has been paid to
- 217 participate.

(11) (a) "Person engaged in an equine or livestock activity" means a person who rides, trains, leads, drives, or works with an equine or livestock, respectively.

(b) Subsection (11)(a) does not include a spectator at an equine or livestock activity or a participant at an equine or livestock activity who does not ride, train, lead, or drive an equine or any livestock.

Section 5. Section **78B-4-202**, which is renumbered from Section 78-27b-102 is renumbered and amended to read:

**[78-27b-102].        78B-4-202. Equine and livestock activity liability limitations.**

(1) It shall be presumed that participants in equine or livestock activities are aware of and understand that there are inherent risks associated with these activities.

(2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, unless the sponsor or professional:

(a) (i) provided the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence;

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

(d) (i) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) that act or omission causes the injury; or

(e) intentionally injures or causes the injury to the participant.

(3) This chapter does not prevent or limit the liability of an equine activity sponsor, an equine professional, a livestock activity sponsor, or a livestock professional who is:

(a) a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, in an action to recover for damages incurred in the course of providing professional treatment of an equine;



(b) liable under Title 4, Chapter 25, Estrays and Trespassing Animals; or

(c) liable under Title 78, Chapter 15, Product Liability Act.

Section 6. Section **78B-4-203**, which is renumbered from Section 78-27b-103 is renumbered and amended to read:

**~~[78-27b-103].~~        78B-4-203. Signs to be posted listing inherent risks and liability limitations.**

(1) An equine or livestock activity sponsor shall provide notice to participants of the equine or livestock activity that there are inherent risks of participating and that the sponsor is not liable for certain of those risks.

(2) Notice shall be provided by:

(a) posting a sign in a prominent location within the area being used for the activity; or

(b) providing a document or release for the participant, or the participant's legal guardian if the participant is a minor, to sign.

(3) The notice provided by the sign or document shall be sufficient if it includes the definition of inherent risk in Section ~~[78-27b-101]~~ 78B-4-201 and states that the sponsor is not liable for those inherent risks.

(4) Notwithstanding Subsection (1), signs are not required to be posted for parades and activities that fall within Subsections ~~[78-27b-101]~~ 78B-4-201(2)(f) and (7)(c), (e), (g), (h), and (j).

Section 7. Section **78B-4-301**, which is renumbered from Section 78-27d-101 is renumbered and amended to read:

### **Part 3. Commonsense Consumption Act**

**~~[78-27d-101].~~        78B-4-301. Title.**

This ~~[chapter]~~ part is known as the "Commonsense Consumption Act."

Section 8. Section **78B-4-302**, which is renumbered from Section 78-27d-102 is renumbered and amended to read:

**~~[78-27d-102].~~        78B-4-302. Definitions.**

As used in this ~~[chapter]~~ part:

(1) "Claim" means any assertion by or on behalf of a natural person, as well as any derivative claim arising from it, and asserted by or on behalf of any other person.

(2) "Food":

(a) means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption;

(b) does not include:

(i) tobacco products;

(ii) alcohol products;

(iii) vitamins or dietary supplements;

(iv) illegal drugs; or

(v) prescription or over-the-counter drugs.

(3) "Knowing and willful violation" means that the conduct constituting the violation was:

(a) committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers; and

(b) not required by regulation, order, rule, ordinance, or any statute administered by a federal, state, or local government agency.

(4) "Condition resulting from long term consumption of food" means the cumulative effect of consumption of food, which includes weight gain, obesity, or other generally known health conditions allegedly caused by or likely to result from the consumption of food.

Section 9. Section **78B-4-303**, which is renumbered from Section 78-27d-103 is renumbered and amended to read:

**[78-27d-103].        78B-4-303. Prevention of unfounded lawsuits -- Exemption.**

(1) Except as provided in Subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, advertiser of a food, or an association of one or more such entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim of obesity or weight gain resulting from the consumption of food.

(2) Subsection (1) may not apply where the claim of obesity or weight gain is based on:

(a) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, regulation, or ordinance and the claimed injury was proximately caused by the violation; or

(b) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that the violation is

311 knowing and willful, and the claimed injury was proximately caused by the violation.

312 Section 10. Section **78B-4-304**, which is renumbered from Section 78-27d-104 is  
313 renumbered and amended to read:

314 ~~[78-27d-104].~~ **78B-4-304. Pleading requirements.**

315 (1) In any action commenced under the provisions of Subsection ~~[78-27d-103]~~  
316 78B-4-303(2), the complaint or petition shall state with particularity the following:

317 (a) the statute, rule, regulation, ordinance, or other law that was allegedly violated;

318 (b) the facts that are alleged to constitute a material violation of the statute, rule,  
319 regulation, ordinance, or other law; and

320 (c) the facts alleged to demonstrate that the violation proximately caused actual injury  
321 to the plaintiff.

322 (2) The complaint or petition shall also state with particularity facts sufficient to  
323 support a reasonable inference that the violation was with intent to deceive or injure consumers  
324 or with the actual knowledge that the violation was injurious to consumers.

325 Section 11. Section **78B-4-305**, which is renumbered from Section 78-27d-105 is  
326 renumbered and amended to read:

327 ~~[78-27d-105].~~ **78B-4-305. Stay pending motion to dismiss.**

328 (1) In any action commenced under the provisions of Subsection ~~[78-27d-103]~~  
329 78B-4-303(2), all discovery and other proceedings shall be stayed during the pendency of any  
330 motion to dismiss unless the court finds upon the motion of any party that particularized  
331 discovery is necessary to preserve evidence or to prevent undue prejudice to a party.

332 (2) During the pendency of any stay of discovery pursuant to this section, unless  
333 otherwise ordered by the court, any party to the action with actual notice of the allegations  
334 contained in the complaint shall treat all documents, data compilations, and tangible objects  
335 that are in the custody or control of the party and are relevant to the allegations, as if they were  
336 the subject of a continuing request for production from an opposing party under Rule 34,  
337 URCP.

338 Section 12. Section **78B-4-306**, which is renumbered from Section 78-27d-106 is  
339 renumbered and amended to read:

340 ~~[78-27d-106].~~ **78B-4-306. Applicability.**

341 The provisions of this chapter apply to all covered claims pending on May 3, 2004, and

all claims filed after that date, regardless of when the claim arose.

Section 13. Section **78B-4-401**, which is renumbered from Section 78-27-51 is renumbered and amended to read:

**Part 4. Inherent Risks of Skiing**

~~[78-27-51].~~ **78B-4-401. Public policy.**

The Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of law that certain risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks.

Section 14. Section **78B-4-402**, which is renumbered from Section 78-27-52 is renumbered and amended to read:

~~[78-27-52].~~ **78B-4-402. Definitions.**

As used in this ~~act~~ part:

(1) "Inherent risks of skiing" means those dangers or conditions which are an integral part of the sport of recreational, competitive, or professional skiing, including, but not limited to:

(a) changing weather conditions;

(b) snow or ice conditions as they exist or may change, such as hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;

(c) surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;

(d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking or grooming operations, and other terrain modifications such as terrain parks, and terrain features such as jumps, rails, fun boxes, and all other constructed and natural features such as half pipes, quarter pipes, or freestyle-bump terrain;

(e) impact with lift towers and other structures and their components such as signs,

posts, fences or enclosures, hydrants, or water pipes;

(f) collisions with other skiers;

(g) participation in, or practicing or training for, competitions or special events; and

(h) the failure of a skier to ski within the skier's own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, using skis, sled, tube, snowboard, or any other device.

(4) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

Section 15. Section **78B-4-403**, which is renumbered from Section 78-27-53 is renumbered and amended to read:

**[78-27-53]. 78B-4-403. Bar against claim or recovery from operator for injury from risks inherent in sport.**

Notwithstanding anything in Sections 78-27-37 through 78-27-43 to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing.

Section 16. Section **78B-4-404**, which is renumbered from Section 78-27-54 is renumbered and amended to read:

**[78-27-54]. 78B-4-404. Trail boards listing inherent risks and limitations on liability.**

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this act.

Section 17. Section **78B-4-501**, which is renumbered from Section 78-11-22 is renumbered and amended to read:

#### **Part 5. Miscellaneous Provisions**

**[78-11-22]. 78B-4-501. Good Samaritan Act.**

(1) A person who renders emergency care at or near the scene of, or during an

emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent in:

(a) implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Section 18. Section **78B-4-502**, which is renumbered from Section 78-11-22.1 is renumbered and amended to read:

~~[78-11-22.1].~~      **78B-4-502. Donation of food -- Liability limits.**

(1) A person or entity who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the donor that constitutes gross negligence, recklessness, or intentional misconduct.

(2) A nonprofit organization that distributes either directly or indirectly apparently wholesome food to persons in need at no charge and substantially complies with applicable

local, county, state, and federal laws and regulations regarding the storage and handling of food for public distribution is not subject to civil or criminal liability regarding the condition of the food unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

Section 19. Section **78B-4-503**, which is renumbered from Section 78-27-59 is renumbered and amended to read:

**~~[78-27-59].~~     78B-4-503. Immunity for transient shelters.**

(1) As used in this section, "transient shelter" means any person which provides shelter, food, clothing, or other products or services without consideration to indigent persons.

(2) Except as provided in Subsection (3), all transient shelters, owners, operators, and employees of transient shelters, and persons who contribute products or services to transient shelters, are immune from suit for damages or injuries arising out of or related to the damaged or injured person's use of the products or services provided by the transient shelter.

(3) This section does not prohibit an action against a person for damages or injury intentionally caused by that person or resulting from his gross negligence.

Section 20. Section **78B-4-504**, which is renumbered from Section 78-11-22.2 is renumbered and amended to read:

**~~[78-11-22.2].~~     78B-4-504. Donation of nonschedule drugs or devices --  
Liability limitation.**

(1) As used in this section:

(a) "Administer" is as defined in Section 58-17b-102.

(b) "Dispense" is as defined in Section 58-17b-102.

(c) "Distribute" is as defined in Section 58-17b-102.

(d) "Drug outlet" means:

(i) a pharmacy or pharmaceutical facility as defined in Section 58-17b-102; or

(ii) a person with the authority to engage in the dispensing, delivering, manufacturing, or wholesaling of prescription drugs or devices outside of the state under the law of the jurisdiction in which the person operates.

(e) "Health care provider" means:

(i) a person who is a health care provider, as defined in Section 78-14-3, with the authority under Title 58, Occupations and Professions, to prescribe, dispense, or administer

466 prescription drugs or devices; or

467 (ii) a person outside of the state with the authority to prescribe, dispense, or administer

468 prescription drugs or devices under the law of the jurisdiction in which the person practices.

469 (f) "Nonschedule drug or device" means:

470 (i) a prescription drug or device, as defined in Section 58-17b-102, except that it does

471 not include controlled substances, as defined in Section 58-37-2; or

472 (ii) a nonprescription drug, as defined in Section 58-17b-102.

473 (g) "Prescription drug or device" is as defined in Section 58-17b-102.

474 (2) A drug outlet is not subject to civil liability for an injury or death resulting from the

475 defective condition of a nonschedule drug or device that the drug outlet distributes at no

476 charge, in good faith, and for a charitable purpose to a drug outlet or health care provider for

477 ultimate use by a needy person, provided that:

478 (a) the drug outlet complies with applicable state and federal laws regarding the

479 storage, handling, and distribution of the nonschedule drug or device; and

480 (b) the injury or death is not the result of any act or omission of the drug outlet that

481 constitutes gross negligence, recklessness, or intentional misconduct.

482 (3) A health care provider is not subject to civil liability for an injury or death resulting

483 from the defective condition of a nonschedule drug or device that the health care provider

484 distributes to a drug outlet or health care provider for ultimate use by a needy person or directly

485 administers, dispenses, or distributes to a needy person, provided that:

486 (a) the health care provider complies with applicable state and federal laws regarding

487 the storage, handling, distribution, dispensing, and administration of the nonschedule drug or

488 device;

489 (b) the injury or death is not the result of any act or omission of the health care

490 provider that constitutes gross negligence, recklessness, or intentional misconduct; and

491 (c) in the event that the health care provider directly administers, distributes, or

492 dispenses the nonschedule drug or device to the needy person, the health care provider has

493 retained a consent form signed by the needy person that explains the provisions of this section

494 which extend liability protection for charitable donations of nonschedule drugs and devices.

495 (4) Nothing in this section may be construed as:

496 (a) permitting a person who is not authorized under Title 58, Occupations and



Professions, to operate as a drug outlet or practice as a health care provider within the state; or  
(b) extending liability protection to any person who acts outside of the scope of  
authority granted to that person under the laws of this state or the jurisdiction in which the  
person operates or practices.

Section 21. Section **78B-4-505**, which is renumbered from Section 78-11-28 is  
renumbered and amended to read:

**~~[78-11-28].~~ 78B-4-505. Liability of reprocessor of single-use medical devices.**

(1) For purposes of this section:

(a) "Critical single-use medical device" means a medical device that:

(i) is marked as a single-use device by the original manufacturer; and

(ii) is intended to directly contact normally sterile tissue or body spaces during use, or  
is physically connected to a device intended to contact normally sterile tissue or body spaces  
during use.

(b) "Original manufacturer" means any person or entity who designs, manufactures,  
fabricates, assembles, or processes a critical single-use medical device which is new and has  
not been used in a previous medical procedure.

(c) "Reprocessor" includes a person or entity who performs the functions of contract  
sterilization, installation, relabeling, remanufacturing, repacking, or specification development  
of a reprocessed critical single-use medical device.

(d) "Reconditioned or reprocessed critical single-use medical device" means a critical  
single use medical device that:

(i) has previously been used on a patient and has been subject to additional processing  
and manufacturing for the purpose of additional use on a different patient;

(ii) includes a device that meets the definition under Subsection (1)(a), but has been  
labeled by the reprocessor as "recycled," "refurbished," or "reused"; and

(iii) does not include a disposable or critical single-use medical device that has been  
opened but not used on an individual.

(2) A reprocessor who reconditions or reprocesses a critical single-use medical device  
assumes the liability:

(a) of the original manufacturer of the critical single-use medical device; and

(b) for the safety and effectiveness of the reconditioned or reprocessed critical

528 single-use medical device.

529 Section 22. Section **78B-4-506**, which is renumbered from Section 78-27-60 is  
530 renumbered and amended to read:

531 **~~[78-27-60]. 78B-4-506. Limited immunity for architects and engineers~~**  
532 **inspecting earthquake damage.**

533 (1) A professional engineer licensed under Title 58, Chapter 22, Professional Engineers  
534 and Land Surveyors Licensing Act, or an architect licensed under Title 58, Chapter 3a,  
535 Architects Licensing Act, who provides structural inspection services at the scene of a declared  
536 national, state, or local emergency caused by a major earthquake is not liable for any personal  
537 injury, wrongful death, or property damage caused by the good faith inspection for structural  
538 integrity or nonstructural elements affecting health and safety of a structure used for human  
539 habitation or owned by a public entity if the inspection is performed:

- 540 (a) voluntarily, without compensation or the expectation of compensation;  
541 (b) at the request of a public official or city or county building inspector acting in an  
542 official capacity; and  
543 (c) within 30 days of the earthquake.

544 (2) The immunity provided for in Subsection (1) does not apply to gross negligence or  
545 willful misconduct.

546 Section 23. Section **78B-4-507**, which is renumbered from Section 78-27-61 is  
547 renumbered and amended to read:

548 **~~[78-27-61]. 78B-4-507. Amusement park rides -- Park responsibilities -- Rider~~**  
549 **responsibilities.**

550 (1) As used in this section:

- 551 (a) (i) "Amusement park" means any permanent indoor or outdoor facility or park  
552 where amusement rides are available for use by the general public.  
553 (ii) "Amusement park" does not include a ski resort, a traveling show, carnival, or fair.  
554 (b) "Amusement ride" means a device or attraction at an amusement park which carries  
555 or conveys passengers along, around, or over a fixed or restricted route or course or allows the  
556 passenger to steer or guide it within an established area for the purpose of giving its passengers  
557 amusement, pleasure, thrills, or excitement. "Amusement ride" includes:  
558 (i) any water-based recreational attraction, including all water slides, wave pools, and

559 water parks; and

560 (ii) typical rides, including roller coasters, whips, ferris wheels, and merry-go-rounds.

561 (c) "Intoxicated" means a person is under the influence of alcohol, a controlled  
562 substance, or any substance having the property of releasing toxic vapors, to a degree that the  
563 person may endanger himself or another, in a public place or in a private place where he  
564 unreasonably disturbs other persons.

565 (d) "Operator" means any person, firm, or corporation that owns, leases, manages, or  
566 operates an amusement park or amusement ride and all employees and agents of the  
567 amusement park.

568 (e) "Rider" means any person who is:

569 (i) waiting in the immediate vicinity of an amusement ride in order to get on the ride;

570 (ii) in the process of leaving the ride but remains in its immediate vicinity; or

571 (iii) a passenger or participant on an amusement ride.

572 (2) An amusement park shall inform riders in writing, where appropriate, of the nature  
573 of the ride, including factors which would assist riders in determining whether they should  
574 participate in the ride activity and the rules concerning conduct on each ride. Information  
575 concerning the rules of conduct may be given verbally at the beginning of each ride segment or  
576 posted in writing conspicuously at the entrance to each ride.

577 (3) Riders are responsible for obeying the posted rules and verbal instructions of the  
578 amusement ride operator.

579 (4) A rider may not:

580 (a) board or dismount from an amusement ride except at a designated area;

581 (b) board an amusement ride if he has a physical condition that may be aggravated by  
582 participation on the ride;

583 (c) disconnect, disable, or attempt to disconnect or disable, any safety device, seat belt,  
584 harness, or other restraining device before, during, or after movement of the amusement ride  
585 has started except at the express instruction of the operator;

586 (d) throw or expel any object from an amusement ride;

587 (e) act in any manner contrary to posted or oral rules while boarding, riding, or  
588 dismounting from an amusement ride; or

589 (f) engage in any reckless act or activity which may injure himself or others.

(5) A rider may not board or attempt to board any amusement ride if he is intoxicated.

(a) An operator of an amusement park ride may prevent a rider who is perceptibly or apparently intoxicated from boarding an amusement ride.

(b) An operator who prevents a rider from boarding an amusement ride under this section, is not criminally or civilly liable if the operator reasonably believes that the rider is intoxicated.

(6) An amusement park shall post signs and notices in conspicuous locations throughout the park informing riders of the importance of reporting all injuries sustained on amusement park premises. The signs shall contain the location where any injuries may be reported.

(7) A rider, or the parent or guardian of a minor rider on the minor's behalf, may report in writing to the amusement facility or its designated agent any injuries sustained on an amusement ride before leaving the amusement facility premises, unless the rider, or parent or guardian of a minor rider, is unable to file a report because of the severity of the injuries to the rider. The report shall be filed as soon as reasonably possible and include:

(a) the name, address, and phone number of the injured person;

(b) if the injured person is a minor, the name, address, and phone number of the parent or guardian filing the report;

(c) a brief description of the incident causing the injury, including the location, date, and time of the injury;

(d) a description of the injury, including the cause, if known; and

(e) the name, address, and phone number of any known witnesses to the incident.

(8) The actions of any rider of sufficient age and knowledge to assume the inherent risks of an amusement ride who violates the provisions of Subsection (3), (4), or (5) may be considered by the court in a civil action brought by a rider against the amusement park operator for injuries sustained while at the amusement park for the purpose of allocating fault between the parties.

Section 24. Section **78B-4-508**, which is renumbered from Section 78-27-62 is renumbered and amended to read:

**[78-27-62]. 78B-4-508. Limitation on liability of hockey facilities.**

(1) As used in this section, "hockey facility" means a facility where hockey is

customarily played or practiced and the general public is charged an admission fee to attend.

(2) The owner or operator of a hockey facility is not liable for any injury to the person or property of any person as a result of that person being hit by a hockey puck or stick unless:

(a) the person is situated completely behind a board, glass, or similar barrier and the board, glass, or barrier is defective; or

(b) the injury is caused by negligent or willful and wanton conduct in connection with the game of hockey by the owner or operator or any hockey player, coach, or manager employed by the owner or operator.

Section 25. Section **78B-4-509**, which is renumbered from Section 78-27-63 is renumbered and amended to read:

**[78-27-63]. 78B-4-509. Inherent risks of certain recreational activities -- Claim barred against county or municipality -- No effect on duty or liability of person participating in recreational activity or other person.**

(1) As used in this section:

(a) "Inherent risks" means those dangers, conditions, and potentials for personal injury or property damage that are an integral and natural part of participating in a recreational activity.

(b) "Municipality" has the meaning as defined in Section 10-1-104.

(c) "Person" includes an individual, regardless of age, maturity, ability, capability, or experience, and a corporation, partnership, limited liability company, or any other form of business enterprise.

(d) "Recreational activity" includes a rodeo, an equestrian activity, skateboarding, skydiving, para gliding, hang gliding, roller skating, ice skating, fishing, hiking, walking, running, jogging, bike riding, or in-line skating on property:

(i) owned, leased, or rented by, or otherwise made available to:

(A) with respect to a claim against a county, the county; and

(B) with respect to a claim against a municipality, the municipality; and

(ii) intended for the specific use in question.

(2) Notwithstanding anything in Sections 78-27-37, 78-27-38, 78-27-39, 78-27-40, 78-27-41, 78-27-42, and 78-27-43 to the contrary, no person may make a claim against or recover from any of the following entities for personal injury or property damage resulting

652 from any of the inherent risks of participating in a recreational activity:

653 (a) a county, municipality, local district under Title 17B, Limited Purpose Local  
654 Government Entities - Local Districts, special service district under Title 17A, Chapter 2, Part  
655 13, Utah Special Service District Act, or dependent district under Title 17A, Chapter 3,  
656 Dependent Districts; or

657 (b) the owner of property that is leased, rented, or otherwise made available to a  
658 county, municipality, local district, special service district, or dependent district for the purpose  
659 of providing or operating a recreational activity.

660 (3) (a) Nothing in this section may be construed to relieve a person participating in a  
661 recreational activity from an obligation that the person would have in the absence of this  
662 section to exercise due care or from the legal consequences of a failure to exercise due care.

663 (b) Nothing in this section may be construed to relieve any other person from an  
664 obligation that the person would have in the absence of this section to exercise due care or  
665 from the legal consequences of a failure to exercise due care.